

PROPOSAL TO SUPPRESS A WORK

Edited by John McNeill

Response to: Proposal to add *Selbyana* vol. 23 Supplement to the “opera utique oppressa” by Paul van RijkvorselWesley E. Higgins & David H. Benzing (Editors, *Selbyana*)*Center for Tropical Plant Science & Conservation, Marie Selby Botanical Gardens, 811 South Palm Avenue, Sarasota, Florida 34236, U.S.A. whiggins@selby.org (author for correspondence)*

The author of the proposal (Rijkvorsel in *Taxon* 55: 1053. 2006) to add *Selbyana* vol. 23 Supplement (2002) to the *Opera utique oppressa* in App. VI of the *International Code of Botanical Nomenclature* (ICBN) (McNeill & al. in *Regnum Veg.* 146. 2006) declares that the nomenclaturally legitimate publication of *Phragmipedium kovachii* J.T. Atwood, Dalström & Ric. Fernández should be invalidated. It is clear, however, that the reasons for this are based on the author's personal, emotional and unclear ideas about the background and underlying facts of this case; no rules or recommendations outlined in the ICBN, or elsewhere, were violated.

The author of the proposal states: “The material was transported in direct violation of an international treaty specifically designed to protect rare species.” It is assumed here that the author is referring to CITES (Convention on International Trade in Endangered Species) as the “international treaty.” As the name indicates, this is an international treaty that regulates the trade of endangered species of plants and animals. CITES is not designed to protect “rare species” in their habitats. In compliance with CITES requirements (Article VII.6), however, the type specimen of *Phragmipedium kovachii* was returned to the country of origin (Article VIII.1b), which remains the only “material” of this taxon to be returned to the Peruvian authorities from anywhere.

Selby Gardens was not involved in any way with the exportation of the plant from Peru and its importation into the United States. The basic transportation facts are: Kovach purchased the plant from a Peruvian vendor, he paid a Peruvian agricultural export tax, the plant's entry into the U.S. was cleared by U.S. customs and the U.S. Department of Agriculture. However, the U.S. Fish and Wildlife Service three months later declared that the importation was a violation of the U.S. Endangered Species Act (ESA). Kovach was fined US\$1,000 for not having the required permits and Marie Selby Botanical Gardens found at fault for not having obtained a CITES Appendix 1 export permit (a misdemeanor). Marie Selby Botanical Gardens (SEL) returned the type specimen, using a Certificate of Scientific Exchange to the Peruvian National Herbarium USM (U.S. Fish and Wildlife Service later determined that USM, the Peruvian CITES Scientific Authority was not a CITES registered institution).

Rijkvorsel makes the statement that “Rushing into ad hoc publication just to ‘beat a competitor’ hardly constitutes the proper pursuit of science.” Whether an author decides to publish a taxon immediately after it has been established as new to science, or decides to wait six months, is irrelevant to the validity of the publication. On the contrary, the sooner new species are properly and legitimately described, the better it is for the rest of the world in general, and scientific community in particular. There is no benefit to be gained in holding scientific data back, unless the collection data is insufficient.

In describing *Phragmipedium kovachii*, close attention was paid to properly describing this taxon. The authors of the species epithet, in compliance with long established botanical tradition, chose to name the plant after Michael Kovach, who first brought the plant to scientific attention. The Atwood & al. manuscript was submitted to *Selbyana* and peer-reviewed by two orchid taxonomists before publication. A decision was made by Selby Gardens to publicize quickly this exciting discovery. In an effort to support Peruvian science, Ricardo Fernandez of the University of San Marcos (USM), Lima, Peru, was invited as co-author. Notably the author of *Phragmipedium peruvianum* also rushed into publication. The editor of *Orchids Magazine of the American Orchid Society* rescheduled an article from the July issue to insert the Christenson article (in *Orchids* (West Palm Beach) 71: 620. Jul 2002) (Watson, pers. comm.). Additionally, *Orchids* is a horticultural magazine, not a peer-reviewed scientific journal.

Christenson, by his own admission, did not see the *Phragmipedium peruvianum* specimen, and apparently the cited type collection, “Christenson 2056 (holotype: USM)”, does not exist, because no such specimen is in USM (Fernández, pers. comm.), and in July 2005, Christenson designated one of the flowers on the USM herbarium sheet of *K. Villena s/n ex Bennett 7496-1*, a specimen without the number 2056 and otherwise lacking any reference to Christenson, as the holotype for *P. peruvianum*. The ICBN recommends: “Rec. 32C.1. When naming a new taxon, authors should not adopt a name that has been previously but not validly published for a different taxon.” “*Phragmipedium peruvianum* Hort.” has been previously used for *Phragmipedium richteri* Roeth

& O. Gruss by R.J. Rands (Malibu, California). Not only is the name *Phragmipedium peruvianum* a bad choice, but it could be argued that the name is not validly published since the designated type specimen does not exist.

Following legal procedures that resulted from the return of the *Phragmipedium kovachii* to Peru, Marie Selby Botanical Gardens fulfilled all agreements with the U.S. Department of Justice. These U.S. Department of Justice “requirements” do not (and must not) alter the nomenclatural status of *Phragmipedium kovachii*, as ruled by the ICBN. The epithet has been generally accepted among taxonomists and growers alike as the correct name for this particular taxon.

In addition, other statements brought forward by Rijckevorsel are either false or misleading. The statement that the *Selbyana* vol. 23 Supplement publication involved “international protests, police raids into greenhouses...” etc., is exaggerated or false. The one international protest from authorities in Peru demanded that any and all material of the concerned plant was to be returned to Peru. At the time the request arrived, this had already been accomplished. The type specimen was safely deposited in the herbarium of the University of San Marcos, Lima, and the remainder of the single plant brought to Selby Gardens had been handed over to the U.S. Fish and Wildlife Service, which kept the plant as evidence until it apparently died in custody, in 2005. The “police raids” that were reported in media were completely unrelated

to the *Selbyana* publication (and Selby Gardens), and concerned commercial trade of orchid plants, including *Phragmipedium kovachii*, by other parties.

The author of the proposal states, “Allowing this publication to stand may well send out the message to the world that the botanical community considers violation of CITES, blatant ‘name-hunting’ and criminal convictions as acceptable parts of the process of describing a taxon.” The ICBN preamble states in paragraph 9: “The only proper reasons for changing a name are either a more profound knowledge of the facts resulting from adequate taxonomic study or the necessity of giving up a nomenclature that is contrary to the rules.” If the Rijckevorsel proposal is adopted it will set a precedence of subjective “naming rights” for other closely competing names such as *Paphiopedilum tigrinum* Koop. & N. Haseg. (in *Orchid Advocate* 16(3): 78. 4 Jun 1990) versus *Paphiopedilum markianum* Fowlie (in *Orchid Dig.* 54(3): 125. “July-Aug.-Sept., 1990”, preceded by excerpt on 24 May 1990) where there is still disagreement regarding the priority; and *Chironiella* Braem (in *Richardiana* 6: 108. 20 Mar 2006) versus *Brasilela* Campacci (in *Colet. Orquídeas Brasil.* 4(Pré-anexo): 99. 20 Feb 2006), both based on *Laelia purpurata* Lindl. & Paxton. This precedent would create chaotic consequences for the stability of botanical nomenclature (cf. Anderson in *Taxon* 56: 615–616. 2007).